

APPEAL NO. 022562  
FILED NOVEMBER 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 6, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that she did not have disability. The claimant appeals those determinations as being against the great weight of the evidence. The claimant also argues that the hearing officer applied an incorrect legal standard in determining whether she sustained a compensable injury and that he also erred in excluding one of her exhibits. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

Initially, we find no merit in the claimant's assertion that the hearing officer required her to prove that she sustained a compensable injury beyond a reasonable doubt, as opposed to applying a preponderance of the evidence standard. The factors emphasized by the claimant in contending that the hearing officer applied a reasonable doubt standard do not demonstrate that the wrong standard was applied. Rather, they are conflicts and inconsistencies in the testimony and evidence presented by the claimant, which were properly considered by the hearing officer in making his credibility determinations.

We likewise find no merit in the assertion that the hearing officer erred in excluding Claimant's Exhibit No. 12 because it was not timely exchanged. That exhibit was a statement from a witness who was present in the file room at the time of the claimant's alleged injury. In response to questioning from the hearing officer, the claimant acknowledged that she knew the name of the witness since the date of the alleged incident. Thus, the hearing officer determined that the claimant, through the exercise of reasonable diligence, could have obtained the statement sooner and complied with the exchange requirement. His determination in that regard is not an abuse of discretion and as such, he did not err in excluding Claimant's Exhibit No. 12.

The claimant had the burden to prove that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will

reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of whether the claimant was injured at work as a result of pulling file crates on \_\_\_\_\_. The hearing officer determined that the claimant did not sustain her burden of proving that she sustained a compensable injury. The hearing officer was acting within his province as the fact finder in so doing. Our review of the record does not demonstrate that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELER'S INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Michael B. McShane  
Appeals Judge